

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-130-E**

IN RE: Ecoplexus, Incorporated,)	
Complainant/Petitioner)	PETITION FOR REHEARING OR
v.)	RECONSIDERATION OF
South Carolina Electric & Gas Company,)	ORDER NO. 2019-293
Defendant/Respondent)	

INTRODUCTION

Pursuant to Regs. 103-825(A)(4) and R. 103-854 and other applicable Rules of Practice and Procedure of the Public Service Commission of South Carolina (this “Commission”), Beulah Solar, LLC (“Beulah Solar”), and Eastover Solar LLC, (“Eastover Solar”), (hereinafter sometimes referred to together as, “Beulah Solar/Eastover Solar”), hereby petitions this Commission for rehearing or reconsideration of Order No. 2019-293, issued in Docket 2019-130-E on April 24, 2019.

LAW ON CONSOLIDATION

In Rule 42(a) of the South Carolina Rules of Civil Procedure consolidation may be appropriate when there exist, “...common question of law or fact...” (**hereinafter** as, “Rule 42(a)”). The prior Commission Order, Order No. 2019-13-E, that allowed consolidation between Beulah Solar and Eastover Solar, because Beulah Solar and Eastover Solar shared, “...common and aligned interests...”, and Beulah Solar and Eastover Solar sought, “...common...” relief, (**hereinafter** as the, “Prior Commission Order”). R. 103-840, of this Commission’s Rules and Regulations, “...similar question of law or fact...”, (**hereinafter** as, “R. 103-840”).

SUMMARY OF ARGUMENT

Ecoplexus’ case (**Docket 2019-130-E**), should not have been consolidated with the already consolidated cases of Beulah Solar and Eastover Solar (**Docket 2018-401-E**). Based on the requirements of Rule 42(a), the Prior Commission Order and R. 103-840, set forth in detail hereinabove, Ecoplexus’ case and Beulah Solar and Eastover Solar’s already consolidated case, (i) do not share common/similar questions of law or fact (or if they do, it is only to a very limited extent and the dissimilar issues of law and fact vastly outnumber and outweigh any similar ones); (ii) do not have common and aligned interests; and (iii) do not seek common relief. **Indeed, as set forth in Exhibit “A” attached hereto, the Ecoplexus case is dramatically different from the consolidated Beulah/Eastover cases as there are more than twenty significant factual and legal issues that are not common to the two. Consolidation in this circumstance is**

therefore not proper, would be highly prejudicial to Beulah Solar and Eastover Solar, and would not serve the interests of justice or judicial economy.

PETITION FOR REHEARING OR RECONSIDERATION

Beulah Solar/Eastover Solar request rehearing or reconsideration of this Commission's Order No. 2019-293, issued in Docket 2019-130-E on April 24, 2019, because this Commission, in ordering consolidation without first hearing from Beulah and Eastover, failed to recognize the dramatic differences between the Ecoplexus case and the Beulah/Eastover consolidated case.

The relief sought by Eastover Solar / Beulah Solar (delay of certain milestone payment obligations) is superficially similar to one of the many forms of relief sought by Ecoplexus. But the bases for seeking that relief, and thus the underlying legal and factual issues, are very different. Specifically, Eastover and Beulah seek relief from this Commission because of the uncertainty caused by non-approved curtailment language included by Dominion in its Interconnection Agreements. According to Ecoplexus, on the other hand, "the main reason Ecoplexus is seeking to stay its obligation to make the first milestone payments for the Projects is because *it is Ecoplexus' position that the interconnection costs for the Projects, and therefore the milestone payments, were calculated in a discriminatory, and therefore illegal, manner.*" Letter filing of Ecoplexus, Inc., Docket No. 2019-130-E (Apr. 23, 2019) (emphasis added). Therefore the Ecoplexus complaint raises few, if any, "common questions of law or fact," (Rule 42(a)), and the parties do not have "common and aligned interests," or seek "common relief" (the Prior Commission Order No. 2019-13-E). This is clearly demonstrated by the over twenty dissimilarities between the parties' filings set forth on Exhibit "A", attached hereto. As noted above, given these extensive dissimilarities it would be highly prejudicial and burdensome to Beulah and Eastover to be denied a resolution of their claims until the much different and more complicated Ecoplexus matter can be litigated to conclusion.

In correspondence to this Commission in this Docket, dated April 26, 2019, counsel for Dominion ignored the many significant differences between the two cases and made the unsubstantiated argument that Ecoplexus' case has common issues with Beulah Solar/Eastover Solar's already consolidated case, with respect to the payment of a "Milestone Payment." Dominion's counsel overlooked the fact that the rationale for Ecoplexus' actions relevant to a Milestone payment is completely different from the rationale of Beulah Solar/Eastover Solar's actions relevant to a Milestone Payment. Dominion's counsel's argument is as unpersuasive as

saying that two cases involving contracts for the purchase of automobiles that raise totally different issues of law and fact should be consolidated because each of the different contracts contains a reference to a “down payment.” Given the multiplicity of issues raised in the Ecoplexus complaint, all of which are implicated by Ecoplexus’s request to be relieved of its milestone payment obligations, Dominion is incorrect to suggest (as it does in the April 26 letter) that Ecoplexus’s request for relief from its milestone payment obligation can be resolved separately from the other issues raised in its complaint.

Also in its correspondence to this Commission in this Docket, dated April 26, 2019, in Footnote 1, counsel for Dominion makes an inaccurate and self-serving statement that, “...the interconnection agreements for each of the parties [Ecoplexus, Beulah Solar and Eastover Solar] have been terminated....” **In fact, this Commission has not made the decision that the Interconnection Agreements of any of the three parties, have been terminated.** Unless Dominion has invaded the province of this Commission and made a final determination on a matter still pending before this Commission, the Interconnection Agreements remain in full force and effect. Specifically, Beulah Solar and Eastover Solar’s two Requests for Modification and Beulah Solar and Eastover Solar’s Motions to Maintain Status Quo, were filed prior to the due dates of Milestone Payment #1, in the IAs and this Commission has jurisdiction to decide this matter. For Dominion to say that the “IAs have been terminated” is a weak attempt to equate an argument with a fact.

Finally it appears from Order No 2019-293 that the Commission, in issuing its Order, may have been under the impression that Beulah Solar/Eastover Solar may have consented to consolidation of these Dockets (“Our Staff has checked with the parties in both the Beulah and Eastover cases, and those parties have agreed to consolidate those cases due to the great similarity of the issues, facts, and arguments presented.”), or at least that they would not object to the consolidation of the Ecoplexus Complaint based on what the Commission perceived to be similar issues. To clarify: although Beulah Solar and Eastover Solar did not oppose consolidation of their respective Dockets with each other, at no time did they consent to consolidation of the Ecoplexus matter with their Dockets (nor would they have done so if asked).

CONCLUSION

Based on the foregoing, Rule 42(a), this Commission's Prior Order, and R. 103-840, and the dissimilarities between the issues of law and fact between the Ecoplexus complaint and the Beulah Solar / Eastover Solar matters, this Commission should rehear or reconsider its decision of April 24, 2019, in Order 2019-293 and Order that the Ecoplexus matter not be consolidated into Docket 2018-401-E, the Beulah Solar/Eastover Solar Docket.

And this Commission should grant the relief sought and such other and further relief as it may deem just and appropriate.

Respectfully Submitted,

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